

REMARKS

Claim 108 has been amended as suggested in the Office Action. Claim 98 has been canceled. Claims 100-109 are pending herein. In view of the Amendment and Remarks herein, and the Terminal Disclaimer, it is respectfully contended that the claims are in condition for allowance.

I. Claim Objections

The Office Action objected to claim 98 under 37 C.F.R. 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 98 has been deleted herein. It is respectfully stated that this objection has been properly addressed.

The Office Action further objected to claims 98 and 100-108 due to their readability. While Applicants believe that these claims were appropriate as previously presented, the suggested amendments to claims 108 and those claims dependent thereon have been made. Accordingly, it is respectfully stated that the claims are allowable as presented.

II. Double Patenting

The Office Action rejects claims 98 and 100-108 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,719,943 in view of Huang (U.S. Patent No. 5,439,628) and Nakazima (U.S. Patent No. 5,001,176). Further, the Office Action rejects claims 98 and 100-108 for alleged obviousness-type double patenting over U.S. Patent No. 6,403,936 in view of Huang and Young (Introduction to Polymers, pages 196, 204) and Nakazima. Additionally, the Office Action rejects claims 98 and 100-108 as allegedly being unpatentable over claims 48-61 of U.S. Patent No. 6,100,512 in view of Huang, Young and Nakazima.

In order to address these double patenting rejections, Applicants are herewith submitting a Terminal Disclaimer. It is respectfully submitted that the double patenting rejection has been obviated.

III. Claim Rejections under 35 U.S.C. § 103(a)

The Office Action has rejected claims 98, 100-103 and 105-108 as allegedly being obvious over Huang in view of Misuno et al. (EP 0243206) and any one of Young or Watkins et al. (U.S. Patent No. 5,514,315) or Kojimoto (U.S. Patent No. 4,248,651).

As an initial matter, Applicants state that the parent application, now U.S. Patent No. 6,719,943, included a rejection under § 103(a) to Huang. The rejection in view of Huang was overcome by Applicants therein and the application passed to allowance.

It is axiomatic that in order to render an invention obvious, the cited references must teach or suggest each and every aspect of the claimed invention. In the present case, claim 108 recites, *inter alia*, a container having a micronodular surface. This aspect is not taught or suggested by Huang.

Huang teaches the formation of a filler-containing polypropylene sheet having a surface texture like that of paper. (col. 7, lines 48-51.) Huang emphasizes that the processing aids used in that invention beneficially help improve the smoothness of the sheet surface. (col. 7, lines 51-54.) Huang thus expressly teaches the formation of a relatively smooth sheet, and not one that has a micronodular, that is, rough surface. As such, Huang not only fails to suggest a container having a micronodular surface, it expressly teaches away from this recited element.

There is absolutely no mention or suggestion that a rough (micronodular) surface could result in a container formed from the compositions described in the secondary references. Mitsuno, which addresses compositions for injection molding, states that the compositions therein exhibit “excellent . . . printability” (*see* abstract). This indicates that objects made from Mitsuno’s compositions are smooth so that the printing is “excellent.” Young is silent as to the qualities of any finished product, whether filled or otherwise, made from the polypropylene composition. Kojimoto makes no mention of the surface texture of the resulting polypropylene material. Watkins relates to a deep draw liner for a spa having a depth of about 27 inches (*see* col. 3, line 49-51), and there is no indication whatsoever that the surface of the liner has a rough surface.¹ Due to the absence of the recited micronodular feature in each of the secondary references, the obviousness rejection is improper.

¹ It is submitted that at least the Mitsuno and Watkins references are neither in Applicants’ field of endeavor, nor are they reasonably pertinent to particular problem to which the present invention is directed. *See In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). Applicants reserve the right to argue this point at a later time, if appropriate.

The Office Action further rejects claims 100-103 and 105-107 under the combination of Huang, Mitsuno, Young and Watkins. Because the combination of these references is at least lacking the recited feature of "micronodular surface," the rejection is improper as discussed previously.

The Office Action further rejects claim 104 as allegedly being obvious over Huang in view of Mitsuno and any one of Young or Watkins or Kojimoto, as applied to claims 98, 100-103 and 105-108, and further in view of Nakazima (U.S. Patent No. 5,001,176). As discussed above, Huang teaches away from a micronodular surface, and none of the other cited references, including Nakazima, recitify this deficiency. As such, the rejection of claim 104 should be withdrawn.

CONCLUSION

For the foregoing reasons, the claims are believed to be in condition for allowance. Applicants respectfully seek notification of same. No fees are believed due; however, if any fees are required, please consider this a Petition therefore, and charge any additional fees to Deposit Account No. 50-0674.

Respectfully submitted,

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